

Performance Objectives And Instructional Cues	OUTLINE AND PRESENTATION
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LESSON PLAN INTRODUCTION

A. Course Title: Victim Assistance Laws

Instructional Goals: Provide a basic knowledge of Victim Laws

Instructional Objectives: To Know the Family Violence Protection Act and the Mutual Order of Protection

Instructional Methods:

Lecture; class participation and chalkboard

Handouts: none

Estimated Time: 2 hour

Bibliography and Resources:

Michie, *New Mexico Criminal and Traffic Manuel*

Instructor: _____ Presentation Date: _____

Prepared by: _____ Date: _____

Approved by: _____ Date: _____

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Guide to New
Domestic Violence Legislation
Sharon Pino
Domestic Violence Czar
Office of the Governor
(505) 827-4694

Changes To The Crimes Against Household Members Act

DEFINITIONS (NMSA 30-3-11): There is now a definition of "continuing personal relationship" which applies to all crimes against household member offenses

Under the new legislation, "continuing personal relationship" means "a dating or intimate relationship."

Increased Penalties for

OUTLINE AND PRESENTATION

Repeat Offenders

New Section of Act: MULTIPLE CONVICTIONS OF BATTERY OR AGGRAVATED BATTERY

Three convictions of either battery against a household member (30-3-15) or aggravated battery against a household member (30-3-16), or any combination thereof will be a fourth degree felony offense,

Penalties for a Fourth Degree Felony: Up to eighteen months incarceration and/or up to \$5,000.00 fine

Four or more convictions will be a third degree felony offense.

Penalties for a Third Degree Felony: Up to three years incarceration and/or up to \$5,000.00 fine

Increased Penalties for

Repeat Offenders

However, these increased penalties only apply to convictions where the household member was either a spouse, a former spouse, a co-parent of a child or a person with whom the offender has had a continuing personal relationship.

Intimate Partner Violence

Repeat Victimization

Escalating Cycle of Violence

Homicide

Does NOT have to be the same victim

Therefore, to ensure that prior offenses may be used to enhance penalties in the future, it will be essential to:

Ensure that a stipulation as to the exact relationship of the parties is incorporated into any plea agreement

Ensure that each Judgment and Sentence for the crimes of battery and aggravated battery against a household member contains a finding as to the parties exact relationship of the parties.

Increased Penalties for

Repeat Offenders

Only convictions obtained on or after July 1, 2008 can be used as a prior to enhance penalties.

Prior to enhancement all offenders would have had two prior opportunities to participate in and complete an approved batterers intervention program

Priors obtained prior to July 1, 2008 would not have specified the exact relationship of the parties in the Judgment and Sentence

"Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." *Apprendi*, 530 U.S. at 490

Increased Penalties for

Repeat Offenders

Each offense must have been committed after conviction for the preceding offense

Linam : Crime, Conviction, Crime, Conviction Sequence

Deterrence based concept

OUTLINE AND PRESENTATION

Enhanced punishment is not merited simply because an offender has “sinned more than once,” but is merited where the offender has re-offended after he or she has been given an opportunity to “reform under the threat of more severe punishment.”

Amendments to the Family Violence Protection Act

2007 Amendments Were Focused on VAWA Compliance

Demonstrate that victims of domestic violence, sexual assault and stalking were not being charged (\$) and were afforded the same protections

Demonstrate that NM does not issue mutual orders without a cross-petition and findings to support

Officers were required to identify “Primary Aggressor”

Limits on Internet Publication

FORBEARANCE OF COSTS

NMSA 30-1-15

Prior to amendments never addressed “the filing” and only addressed “issuance or service”

Family Violence Protection Act (40-13-3.1)

Language added to address costs associated with “filing”

No charge for obtaining police reports

No witness shall be charged where prohibited by federal law

No fees for fact witnesses

Likely does not apply to expert witnesses

Definitions in FVPA

NMSA 40-13-2

Domestic Abuse now includes “an incident of stalking or sexual assault whether committed by a household member or not (NMSA 40-13-2 (C))

No Costs for victims who were having to file civil restraining orders

More protections for victims of sexual assault and stalking

Warrantless Arrest for violations, which would not have been possible with a civil restraining order

Primary Aggressor & Mutual Order Issues Addressed

Emphasis on identifying primary aggressor

Domestic Abuse does “not mean the use of force in self-defense or the defense of another” (NMSA 40-13-2)

Definition of Mutual Order of Protection

NMSA 40-13-5 (D): A mutual order shall be issued ONLY in cases where

1. Both parties have petitioned the court
2. The court makes detailed finding of fact indicating that both parties acted primarily as aggressors and that neither party acted primarily in self-defense

NMSA 40-13-5 (G): Cannot issue OP without either a petition or counter petition

Officers required, when appropriate, to “indicate that the party arrested was the predominant aggressor” (NMSA 40-13-7 (B)(5))

Victim Protections

Throughout the FVPA language was changed to clearly identify who was protected by the OP and who was restrained

OUTLINE AND PRESENTATION

Petitioner was replaced with “Protected Party”

Respondent was replaced with “Restrained Party”

Both terms were defined in the definition section (NMSA 40-13-2 (G) & (H))
NMSA 40-13-6

Police only have authority to arrest the “restrained party” for violation of
the OP, (D)

Only a “restrained party” can be tried criminally for violation of an OP,
(F)

Limits on Internet Publications

New Section of FVPA

“A state agency....shall not make available publicly on the internet any
information that would likely reveal the identity or location of the party
protected under an order of protection.”

State and Law Enforcement agencies and the Courts may share
information in “secure, government registries”

VAWA 05

18 USCS § 2265 (d)(3): “A State, Indian tribe, or territory shall not make
available publicly on the internet any information regarding the
registration, filing of a petition for, or issuance of a protection order:
restraining order or injunction in either the issuing or enforcing State,
tribal or territorial jurisdiction, if such publication would be likely to
publicly reveal the identity or location of the party protected under such
order.

A State, Indian tribe, or territory may share information in “secure,
governmental registries”

Offender Treatment and Intervention Fund (NMSA 31-12-11)

Added in “Intervention”

Make the name consistent with they type of services being provided to
batterers throughout the state (education not treatment)

Concerns that “treatment” implied the necessity to be a licensed therapist

Added More flexibility to the fund

Funds are no longer reserved for those “convicted” of domestic abuse

- Courts can refer under any circumstances including entry of
Orders of Protection
- Self Referrals
- Parole Board Referrals

Use of Polygraph Exams

New Section of Chapter 30, Article 9

Needed for federal compliance

Neither law enforcement or a prosecutor can require an alleged victim of sexual
assault to submit to a polygraph exam or other truth-telling device as a condition
for proceeding with the investigation, charging or prosecution of the offense.

This does not prevent law enforcement or prosecutors from asking, it merely
prevents them from conditioning proceeding with the victim’s submission to the
test.

Domestic Violence Capital Fund

\$2 million

Performance Objectives And Instructional Cues	OUTLINE AND PRESENTATION
	<p>Governor allocated \$2 million dollars of capital outlay for domestic violence projects to maintain, repair and renovate facilities to ensure consistent DV service delivery and to plan, design, construct, equip and furnish additional shelters statewide</p> <p>RFA expected to be issued by CYFD by end of July</p> <p>Due to “Anti-Donation” law must work through local or tribal governments</p>